

**SERIAL NO. 09/764,954****PATENT  
Docket RAL920000117US1****REMARKS**

This amendment is in response to the Office Action mailed June 7, 2004.

Claims 1-24 are allowed and will not be discussed further in this amendment.

Claims 22 and 23 are rejected under 35 USC section 103 as being unpatentable over Aimoto (US Patent No. 6,041,038) in view of Peltola et.al (US Patent No. 5,638,359).

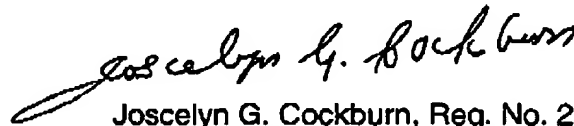
In response to this rejection claims 22 and 23 are amended to include the use of transmit probability as basis to disregard a frame. This feature of the claimed invention is not suggested by any of the references. The basis for disregarding a frame in Aimoto is set forth at Col. 7 lines 18-54 and is different from the claims as amended above. As a consequence the amended claims provide novel structure (with respect to apparatus claims) and novel process (with respect to method claims). The benefits include system throughput resulting from the switch or other communication device not processing frames that would be discarded anyway. It is applicants' contention novel structure and novel process coupled with benefits are evidence of nonobviousness. Therefore, claims 22 and 23 are not obvious in view of the teachings of the references.

Newly submitted claims 24-29 are also patentable over the art of record for reasons including those above.

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It is believed that the present amendment answers all the issues raised by the examiner. Reconsideration is hereby requested and an early allowance of all the claims is solicited.

Respectfully submitted,



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